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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/530,486	06/02/2005	Bruce McGarian	66455-255-7	5343
25269 7590 03/18/2008 DYKEMA GOSSETT PLLC FRANKLIN SQUARE, THIRD FLOOR WEST 1300 I STREET, NW WASHINGTON, DC 20005				
EXAMINER				
ANDREWS, DAVID L				
ART UNIT		PAPER NUMBER		
3672				
MAIL DATE		DELIVERY MODE		
03/18/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/530,486

Applicant(s)

MCGARIAN ET AL.

Examiner

David Andrews

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 33-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 45 and 46 is/are allowed.
- 6) ☒ Claim(s) 33-39, 41, 42 and 47 is/are rejected.
- 7) ☒ Claim(s) 40, 43 and 44 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 11 July 2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a). Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

The amendment filed 12/19/2007 has been entered.

Response to Arguments

Applicant's arguments, filed 12/19/2007, with respect to the rejection(s) of claim(s) 33 and 47 have been fully considered and are persuasive. Therefore, the rejection has been withdrawn. However, upon further consideration, a new ground(s) of rejection is made in view of a reconsideration of the references. Note in the rejection of claim 33, the member 110 of Gano is now considered as a body portion.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 33-39, 41, and 42 are rejected under 35 U.S.C. 102(b) as being anticipated by Gano (US 6,053,254). Gano discloses a downhole deflector tool (and method) for selectively opening and closing a lateral borehole extending from a primary borehole, the tool comprising: a body incorporating a wall provided with an opening extending therethrough (110; opening is the lateral borehole); a hollow tubular deflector member (136) slidably mounted in the body (col. 4, lines 46-52) and having a deflecting surface for deflecting downhole equipment laterally within the body (figure 3); the

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deflector being slidable between an open position, in which the deflecting surface is located adjacent and facing towards said body opening so that downhole equipment laterally deflected by the surface is directed through the opening (figure 3); and a closed position in which the deflector member is oriented relative to the body opening so as to prevent downhole equipment from being laterally deflected through the opening (figure 2); and constraining means for restricting movement of the deflector member relative to the body (col. 4, lines 25-55); wherein the constraining means comprises a pin and groove arrangement (col. 4, lines 53-55); wherein the pin and groove arrangement is such that the deflector member must move axially between two different closed positions before being able to move axially to the open position (the apparatus is considered to have multiple closed positions, which are all those except the open position, and many of these closed positions would be cycled through when opening); wherein the constraining means comprises a shoulder defined by the body and against which the deflector abuts when in the open position (125A); wherein the hollow bore interior of the deflector member comprises first and second, the first portion (figure 3, cross-section near where reference character 110 is pointing) having a larger diameter than the second portion (figure 3, cross-section near where reference character 124 is pointing), wherein the deflecting surface is defined on the second portion; wherein sealing means are provided between the body and the deflector so that when in the closed position fluid located exteriorly of the body is prevented from flowing into the bore of the deflector member (138, 140); wherein the deflecting surface faces diametrically away from the opening (136 may rotate on its up and down movement and

the deflecting surface therefore may be facing any direction in the closed position); and wherein the deflecting surface is axially spaced from the opening in the closed position (figure 2).

In regard to the method claim 42, the use of the apparatus of Gano would encompass the steps as claimed.

Claim 47 is rejected under 35 U.S.C. 102(b) as being anticipated by Hayes et al. (US 5,458,209). Hayes et al. disclose downhole deflector comprising a cylinder having a window (10 in figure 7a) provided in a side thereof and having a ramp (15 in figure 7b) defined on an interior surface for deflecting downhole equipment through the window, with a bore extending longitudinally through the deflector to allow passage of downhole equipment through the deflector without deflection by the ramp (passage exit seen at 58 in figure 7a), and wherein a portion of the bore located uphole of the ramp has a larger diameter than the remainder of the bore (figures 7b and 7c show a larger diameter inset portion about half way uphole of the deflecting surface), said remainder of the bore being located both uphole and downhole of the larger diameter portion.

Allowable Subject Matter

Claim 40, 43 and 44 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 45 and 46 are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Andrews whose telephone number is (571)272-6558. The examiner can normally be reached on Monday-Thursday, 7:30am-5pm and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Bagnell can be reached on (571) 272-6999. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David J. Bagnell/
Supervisory Patent Examiner, Art Unit 3672

DLA
3/5/2008